

**NOT FOR PUBLICATION****IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY****ENTERED**  
ON  
THE DOCKET

DEC 11 2003

WILLIAM T. WALSH, CLERK  
By Charles Sander  
(Deputy Clerk)

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RENEE MCCOY, individually and on  
behalf of all others similarly situated,

Plaintiffs

v.

HEALTH NET, INC., HEALTH NET  
OF THE NORTHEAST, INC., and  
HEALTH NET OF NEW JERSEY, INC.

Defendant.

Civ. Docket No. 03-1801  
Hon. Faith S. Hochberg, U.S.D.J.**ORDER**Date: December 9, 2003**FILED**

DEC 9 - 2003

AT 8:30  
WILLIAM T. WALSH  
CLERK

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ZEV AND LINDA WACHTEL, *et al.*,

Plaintiffs

v.

GUARDIAN LIFE INS. CO., *et al.*,

Defendants.

Civ. Docket No. 01-4183  
Hon. Faith S. Hochberg, U.S.D.J.**HOCHBERG, District Judge:**

This Matter comes before the Court on Defendant Health Net's 1) request that this Court require Plaintiff McCoy to present evidence through witnesses and documents in support of her Motion for a Preliminary Injunction before the Defendants are required to present witnesses to answer the questions this Court has posed regarding the Plaintiff McCoy's Motion for a

Preliminary Injunction; 2) request for an extension of time to file its opposition to the Plaintiff(s)' Motion for Summary Judgment; and 3) request to file a Motion to Dismiss Health Net, Inc. and Health Net of the Northeast, Inc. on the grounds that neither are fiduciaries of the Plaintiff McCoy's Plan. In addition, Guardian Life, a Defendant in the Wachtel matter only, has requested 1) that counsel for Wachtel advise Guardian Life as to whether it plans to file a Motion for Summary Judgment according to the briefing schedule set forth by this Court in its order dated December 3, 2003; 2) an extension of time to oppose the Motion for Summary Judgment, if one is filed in the Wachtel matter; and 3) that this Court and the parties formally address the issue of consolidation.

IT IS on this 9<sup>th</sup> day of December, 2003,

**ORDERED** that the Defendant Health Net's request for a change in procedure for the hearing related to the Plaintiff McCoy's Motion for Preliminary Injunction is **DENIED** because the Court has already determined the procedure which will most expeditiously answer the questions this Court has regarding the Motion for Preliminary Injunction; and

**IT IS FURTHER ORDERED** that the hearing will continue, as previously ordered, on December 10, 2003 at 10:30 am, in the same manner in which this Court proceeded when the hearing began on November 20, 2003, with this Court seeking answers to the questions it has relating to the Plaintiff's likelihood of success on the merits; and

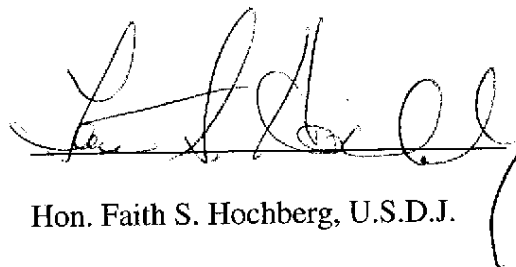
**IT IS FURTHER ORDERED** that Defendant Health Net's request to file a Motion to Dismiss Health Net, Inc. and Health Net of the Northeast is **GRANTED**, but **IT IS FURTHER**

**ORDERED** that the motion be submitted at the close of discovery; and

**IT IS FURTHER ORDERED** that the counsel for Wachtel notify the Defendants in the Wachtel matter, including Guardian Life, by December 10, 2003, as to whether it will be filing an expedited Motion for Summary Judgment in the Wachtel matter pursuant to this Court's order dated December 3, 2003, granting the Plaintiff(s)' request to file an expedited Motion for Summary Judgment; and

**IT IS FURTHER ORDERED** that both the Defendant Health Net's and Defendant Guardian Life's request for an extension to file their opposition to the Plaintiff(s)' Motion for Summary Judgment is **GRANTED**. Their opposition briefs are due January 12, 2004. However, any actions taken by the Defendants, including payment of additional restitution, from the time the Plaintiff(s) first raised the request to file an expedited Motion for Summary Judgment before Magistrate Judge Schwartz, until the time that this Court decides the Plaintiff(s)' Motion for Summary Judgment, shall not affect the Plaintiff(s)' right to recover attorney's fees and costs; and

**IT IS FURTHER ORDERED** that the parties will submit written briefs addressing whether or not the above-captioned actions should be consolidated. The briefs are due according to the same schedule set forth for the Plaintiff(s)' expedited Motion for Summary Judgment (Plaintiff(s)' brief due December 15, 2003; Defendants' Briefs due January 12, 2004).



Hon. Faith S. Hochberg, U.S.D.J.